

on the assessment in paragraph (a)(4) of this section.

(b) If the State plan provides for the establishment, development, or improvement of a public or nonprofit community rehabilitation program, the State plan must contain a description of the need to establish, develop, or improve, as appropriate, the community rehabilitation program to provide vocational rehabilitation services to applicants and eligible individuals, based on the assessment and improvement plans required in paragraphs (a)(4) and (a)(5) of this section.

(Approved by the Office of Management and Budget under control number 1820-0500)

(Authority: Secs. 101(a)(5)(A), 101(a)(12)(B), 101(a)(15)(B), 101(a)(27), 101(a)(28), and 103(b)(2) of the Act; 29 U.S.C. 721(a)(5), (12), (15), (27), and (28) and 723(b)(2))

§ 361.34 Supported employment plan.

(a) The State plan must assure that the State has an acceptable plan under 34 CFR part 363 that provides for the use of funds under that part to supplement funds under this part for the cost of services leading to supported employment.

(b) The supported employment plan, including any needed annual revisions, must be submitted as a supplement to the State plan.

(Approved by the Office of Management and Budget under control number 1820-0500)

(Authority: Secs. 101(a)(25) and 635(a) of the Act; 29 U.S.C. 721(a)(25))

§ 361.35 Strategic plan.

(a) The State plan must assure that the State—

(1) Has developed and implemented a strategic plan for expanding and improving vocational rehabilitation services for individuals with disabilities on a statewide basis in accordance with subpart D of this part; and

(2) Will use at least 1.5 percent of its allotment under this program for expansion and improvement activities in accordance with § 361.73(b).

(b) The strategic plan must be submitted at the same time as the State plan.

(Approved by the Office of Management and Budget under control number 1820-0500)

(Authority: Secs. 101(a)(34) and 120 of the Act; 29 U.S.C. 721(a)(34) and 740)

§ 361.36 Ability to serve all eligible individuals; order of selection for services.

(a) *General provisions.* (1) The State plan must contain—

(i) An assurance that the designated State unit is able to provide the full range of services listed in section 103(a) of the Act, as appropriate, to all eligible individuals. The assurance must be supported by an explanation that satisfies the requirements of paragraph (a)(2) or (a)(3) of this section and describes how, on the basis of the designated State unit's projected fiscal and personnel resources and its assessment of the rehabilitation needs of individuals with severe disabilities within the State, it will—

(A) Continue to provide services to all individuals currently receiving services;

(B) Provide assessment services to all individuals expected to apply for services in the next fiscal year;

(C) Provide services to all individuals who are expected to be determined eligible in the next fiscal year; and

(D) Meet all program requirements; or

(ii) The order to be followed in selecting eligible individuals to be provided services, a justification of that order of selection, and a description of the outcome and service goals and service costs to be achieved for individuals with disabilities in each category within the order and the time within which these goals may be achieved.

(2) For those designated State units that provided assurances in their State plans for the current fiscal year and the preceding fiscal year that they are able to provide the full range of services, as appropriate, to all eligible individuals, the explanation required by paragraph (a)(1)(i) of this section must include a statement that, during the

current fiscal year and the preceding fiscal year, the DSU has in fact—

(i) Provided assessment services to all applicants and the full range of services, as appropriate, to all eligible individuals;

(ii) Made referral forms widely available throughout the State;

(iii) Conducted outreach efforts to identify and serve individuals with disabilities who have been unserved or underserved by the vocational rehabilitation system; and

(iv) Not delayed, through waiting lists or other means, determinations of eligibility, the development of individualized written rehabilitation programs (IWRPs) for individuals determined eligible, or the provision of services for eligible individuals for whom IWRPs have been developed.

(3) For those designated State units unable to provide the full range of services to all eligible individuals during the current or preceding fiscal year, or unable to provide the statement required in paragraph (a)(2) of this section, the explanation required by paragraph (a)(1)(i) of this section must include—

(i) A description of the circumstances that have changed that will allow the DSU to meet the requirements of paragraph (a)(1)(i) of this section in the next fiscal year, including a description of—

(A) The estimated number of and projected costs of serving, in the next fiscal year, individuals with existing IWRPs;

(B) The projected number of individuals with disabilities who will apply for services and will be determined eligible in the next fiscal year and the projected costs of serving those individuals;

(C) The projected costs of administering the program in the next fiscal year, including, but not limited to, costs of staff salaries and benefits, outreach activities, and required statewide studies; and

(D) The projected revenues and projected number of qualified personnel for the program in the next fiscal year;

(ii) Comparable data, as relevant, for the current or preceding fiscal year, or for both years, of the costs listed in paragraphs (a)(3)(i) (A) through (C) of

this section and the resources identified in paragraph (a)(3)(i)(D) of this section and an explanation of any projected increases or decreases in these costs and resources; and

(iii) A demonstration that the projected revenues and the projected number of qualified personnel for the program in the next fiscal year are adequate to cover the costs identified in paragraphs (a)(3)(i) (A) through (C) of this section so as to ensure the provision of the full range of services, as appropriate, to all eligible individuals.

(b) *Time for determining need for an order of selection.* (1) The designated State unit shall determine, prior to the beginning of each fiscal year, whether to establish and implement an order of selection.

(2) If the designated State unit determines that it does not need to establish an order of selection, it shall reevaluate this determination whenever changed circumstances during the course of a fiscal year, such as a decrease in its fiscal or personnel resources or an increase in its program costs, indicate that it may no longer be able to provide the full range of services, as appropriate, to all eligible individuals.

(c) *Establishing an order of selection—* (1) *Basis for order of selection.* An order of selection must be based on a refinement of the three criteria in the definition of “individual with a severe disability” in section 7(15)(A) of the Act.

(2) *Factors that cannot be used in determining order of selection of eligible individuals.* An order of selection may not be based on any other factors, including—

(i) Any duration of residency requirement, provided the individual is present in the State;

(ii) Type of disability;

(iii) Age, gender, race, color, creed, or national origin;

(iv) Source of referral;

(v) Type of expected employment outcome;

(vi) The need for specific services or anticipated cost of services required by an individual; or

(vii) The income level of an individual or an individual’s family.

(3) *Priority for individuals with the most severe disabilities.* The State plan

must assure that those individuals with the most severe disabilities are selected for service before other individuals with disabilities. The designated State unit shall establish criteria for determining which individuals are individuals with the most severe disabilities. The criteria must be consistent with the definition of "individual with a severe disability" in section 7(15)(A) of the Act and the requirements in paragraphs (c) (1) and (2) of this section.

(d) *Administrative requirements.* In administering the order of selection, the designated State unit shall—

(1) Implement the order of selection on a statewide basis;

(2) Notify all eligible individuals of the priority categories in a State's order of selection, their assignment to a particular category, and their right to appeal their category assignment;

(3) Continue to provide all needed services to any eligible individual who has begun to receive services under an IWRP prior to the effective date of the order of selection, irrespective of the severity of the individual's disability;

(4) Ensure that its funding arrangements for providing services under the State plan, including third-party arrangements and awards under the establishment authority, are consistent with the order of selection. If any funding arrangements are inconsistent with the order of selection, the designated State unit shall renegotiate these funding arrangements so that they are consistent with the order of selection.

(e) *State Rehabilitation Advisory Council.* The designated State unit shall consult with and seriously consider the advice of the State Rehabilitation Advisory Council regarding the—

(1) Need to establish an order of selection, including any reevaluation of the need under paragraph (b)(2) of this section;

(2) Priority categories of the particular order of selection;

(3) Criteria for determining individuals with the most severe disabilities; and

(4) Administration of the order of selection.

(Approved by the Office of Management and Budget under control number 1820-0500)

(Authority: Sec. 7(15)(A); 12(d); 17; 101(a)(4); 101(a)(5)(A); 101(a)(7); 101(a)(11)(A); 101(a)(15)(D); 101(a)(24); 101(a)(30); 101(a)(36)(A)(ii); 107(a)(4)(B); and 504(a) of the Act; 29 U.S.C. 706(15)(A), 711(d), 716, 721(a)(4), 721(a)(5)(A), 721(a)(7), 721(a)(11)(A), 721(a)(15)(D), 721(a)(24), 721(a)(30), 721(a)(36)(A)(ii), 727(a)(4)(B), and 794(a))

§ 361.37 Establishment and maintenance of information and referral programs.

(a) *General provisions.* The State plan must assure that—

(1) The designated State unit will establish and maintain information and referral programs adequate to ensure that individuals with disabilities within the State are given accurate information about State vocational rehabilitation services, independent living services, vocational rehabilitation services available from other agencies, organizations, and community rehabilitation programs, and, to the extent possible, other Federal and State services and programs that assist individuals with disabilities, including client assistance and other protection and advocacy programs;

(2) The State unit will refer individuals with disabilities to other appropriate Federal and State programs that might be of benefit to them; and

(3) The State unit will use existing information and referral systems in the State to the greatest extent possible.

(b) *Appropriate modes of communication.* The State plan further must assure that information and referral programs use appropriate modes of communication.

(c) *Special circumstances.* If the State unit is operating under an order of selection for services, the State unit may elect to establish an expanded information and referral program that includes counseling, guidance, and referral for job placements for those eligible individuals who are not in the priority category or categories to receive vocational rehabilitation services under the State's order of selection.